

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

PACIFIC COAST STEEL, et al.,

Plaintiffs,

vs.

TODD LEE LEANY, et al.

Defendants.

2:09-cv-2190-KJD-PAL

**ORDER**

Presently before the Court is Defendant's Objection to Magistrate's Order Denying Defendants' Renewed Motion for Protective Order and For Return of Privileged Documents (#341). Plaintiffs have filed a Response (#349) to which Defendants replied (#364).

Magistrate Judge Leen's decision (#336) to which Defendants object is made pursuant to the authority of magistrate judges under Local Rule 1B1-3 to hear and finally determine any pre-trial matter not specifically enumerated as an exception in 28 U.S.C. Section 636(b)(1)(A). Accordingly, Defendant's "objection" is more properly denominated an "appeal". The standard for reconsideration of any pre-trial matter finally determined by a magistrate judge is whether the magistrate judge's order is clearly erroneous or contrary to law.

The Magistrate Judge determined that Defendant Todd Leany did not have a reasonable

1 expectation of privacy in e-mails he failed to remove or otherwise protect from disclosure after  
2 acquisition by Plaintiff of his computer and other assets. The Magistrate Judge further found that  
3 Leany waived any privilege he may have had to privileged or other confidential materials by failing  
4 to take reasonable means to preserve the confidentiality of the privileged matter. The Magistrate  
5 Judge did, however, agree to enforce the Plaintiffs' agreement to return the majority of  
6 communications identified in Defendants' privileged document log not relevant to this litigation, and  
7 specifically, all of his marital communications and ecclesiastical communications.

8 Defendants' object to the Magistrate Judge's Order, asserting that it does not acknowledge  
9 the correct legal analysis for an employee's reasonable expectation of privacy in personal mail and  
10 computer use of company computers, citing In re Asia Global Crossing, Ltd., 322 B.R. 247, 251  
11 (Bankr.S.D.N.Y.2005).

12 Although the Magistrate Judge did not mechanically repeat each of the factors set forth in  
13 Asia Global Crossing, it is evident that she considered them in making her decision. Evidence was  
14 adduced upon which the Magistrate Judge could have reasonably determined that Leany was aware  
15 or, as a corporate officer of Plaintiff Pacific Coast Steel, should have been aware, that company  
16 computers could not be used for purposes inconsistent with his position as an officer of the company,  
17 that the company was monitoring employee e-mails, that representatives of the company had the  
18 right to access the computer and e-mails and also that he should have been aware of Plaintiff's use  
19 and monitoring policies.

20 The Magistrate Judge also had sufficient basis for determining that the privileges asserted by  
21 Leany had been waived. The computer and all of the information on it, had been acquired by  
22 Plaintiffs as part of an asset purchase and it cannot be said that Leany had any expectation of privacy  
23 in e-mails where he was allegedly working at cross purposes with his duties as an officer of Plaintiff.

1           Accordingly, the Court finds that the Order of the Magistrate Judge (#336) is not clearly  
2 erroneous or contrary to law. The Order is **AFFIRMED**.

3           IT IS FURTHER ORDERED that Defendants' Appeal, improperly denominated as an  
4 "objection" is **DISMISSED**.

5           DATED: March 23, 2012

6           

7  
8           \_\_\_\_\_  
9           Kent J. Dawson  
10           United States District Judge  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26